

the individual, if the individual consents to be interviewed, or such other investigation as the Director deems appropriate. On the basis of such interview and/or investigation, the Director may authorize the granting of access authorization and/or employment clearance.

(b) The individual may elect on constitutional or other grounds not to participate in an interview or other investigation; however, such refusal or failure to furnish or authorize the furnishing of relevant and material information is deemed to be derogatory information pursuant to § 10.11(a)(5) and (12).

(c) If the director, Division of Security, cannot make a favorable finding regarding the eligibility of an individual for access authorization and/or employment clearance, the question of the individual's eligibility shall be resolved in accordance with the procedures set forth in § 10.20 *et seq.*

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

### Subpart C—Procedures

#### § 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of hearings and administrative review of questions concerning an individual's eligibility for access authorization and/or employment clearance pursuant to the Atomic Energy Act of 1954, as amended, and Executive Orders 10450 and 10865, when a resolution favorable to the individual cannot be made on the basis of the interview or other investigation.

#### § 10.21 Suspension of access authorization and/or employment clearance.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for access authorization and/or employment clearance, the Director, Division of Security, through the Director, Office of Administration, shall forward to the Executive Director for Operations or a Deputy Executive Director, his or her recommendation as to whether the individual's access authorization and/or employment clearance should be suspended pending the final determination resulting from the

operation of the procedures provided in this part. In making this recommendation the Director, Division of Security, shall consider such factors as the seriousness of the derogatory information developed, the degree of access of the individual to classified information, and the individual's opportunity by reason of his or her position to commit acts adversely affecting the national security. An individual's access authorization and/or employment clearance may not be suspended except by the direction of the Executive Director for Operations or a Deputy Executive Director.

[55 FR 4, Jan. 2, 1990]

#### § 10.22 Notice to individual.

A notification letter, prepared by the Division of Security, approved by the Office of General Counsel, and signed by the Director, Office of Administration, shall be presented to each individual whose eligibility for access authorization and/or employment clearance is in question. Where practicable, such letter shall be presented to the individual in person. The letter will be accompanied by a copy of this part and shall state:

(a) That reliable information in the possession of the NRC has created a substantial doubt concerning the individual's eligibility for access authorization and/or employment clearance;

(b) The information that creates a substantial doubt regarding the individual's eligibility for access authorization and/or employment clearance, which shall be as comprehensive and detailed as the national security permits;

(c) That unless the individual files with the Director, Office of Administration, a written request for a hearing within 20 days of the individual's receipt of the notification letter, the Director, Division of Security, through the Director, Office of Administration, will submit a recommendation as to the final action to the Executive Director for Operations on the basis of the information in the possession of the NRC;

(d) That if the individual files a written request for a hearing with the Director, Office of Administration, the individual must file with that request a

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written answer under oath or affirmation which admits or denies specifically each allegation and each supporting fact contained in the notification letter. A general denial is not sufficient to controvert a specific allegation. If the individual is without knowledge, he or she shall so state and that statement shall operate as a denial. The answer shall also state any additional facts and information that the individual desires to have considered in explanation or mitigation of allegations in the notification letter. Failure to specifically deny or explain or deny knowledge of any allegation or supporting fact shall be deemed an admission that the allegation or fact is true;

(e) That if the individual does not want to exercise his or her right to a hearing, but does want to submit an answer to the allegations in the notification letter, the individual may do so by filing with the Director, Office of Administration, within 20 days of his receipt of the notification letter, a written answer in accordance with the requirements of paragraph (d) of this section;

(f) That the procedures in § 10.24 *et seq.* shall apply to any hearing and review.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

### **§ 10.23 Failure of individual to request a hearing.**

(a) In the event the individual fails to file a written request for a hearing pursuant to § 10.22 within 20 days of his receipt of the notification letter, a recommendation as to the final action to be taken shall be made by the Director, Division of Security, through the Director, Office of Administration, to the Executive Director for Operations on the basis of the information in the possession of the NRC, including any answer filed by the individual.

(b) The Director, Office of Administration, may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer

to the matters contained in the notification letter.

[47 FR 38676, Sept. 2, 1982, as amended at 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

### **§ 10.24 Procedures for hearing and review.**

(a) Upon receipt of a timely filed request for a hearing and answer complying with the requirements set forth in § 10.22, the Director, Office of Administration, shall forthwith appoint a Hearing Examiner, and the General Counsel shall forthwith assign an NRC attorney to act as Hearing Counsel. The Director, Office of Administration, shall promptly notify the individual of the identity of the Hearing Examiner and proposed hearing date, which shall be selected with due regard for the convenience of the parties and their representatives.

(b) Within 72 hours of being notified of the identity of the Hearing Examiner, the individual may request that the Hearing Examiner be disqualified for cause by filing with the Director, Office of Administration, a written statement of the individual's reasons for seeking disqualification. The time for filing the request may be extended by the Director, Office of Administration, for good cause shown. If the Director, Office of Administration, grants the request the procedures of paragraph (a) of this section and this paragraph shall be followed just as though there had been no prior appointment.

(c) The individual shall have the right to appear at the hearing before the Hearing Examiner, to be represented by counsel or other representative, to introduce documentary or other evidence, and to call, examine, and cross-examine witnesses, subject to the provisions and limitations set forth in this part.

[47 FR 38676, Sept. 2, 1982, as amended at 51 FR 35999, Oct. 8, 1986; 52 FR 31609, Aug. 21, 1987; 54 FR 53316, Dec. 28, 1989]

### **§ 10.25 NRC Hearing Counsel.**

(a) Hearing Counsel assigned pursuant to § 10.24 shall, prior to the scheduling of the hearing, review the information in the case and shall request the presence of witnesses and the production of documents and other physical